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March 3, 2003

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by SBC Communications, Inc., et al for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-16

Dear Ms. Dortch:

On behalf of the Competitive Local Exchange Carriers Association of Michigan, enclosed for filing please find the Reply Comments Opposing Application of the Competitive Local Exchange Carriers Association of Michigan, the Small Business Association of Michigan, and the Michigan Consumer Federation in the above referenced matter, pursuant to the Commission's Public Notice No. DA 03-156 of January 16, 2003. As this filing is being made via the Commission's Electronic Comment Filing System (ECFS), only the attached copy is provided.

Thank you for your cooperation in this regard.

Very truly yours,

CLARK HILL PLC

Roderick S. Coy
Leland R. Rosier

RSC:pgt
Enclosures

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March 3, 2003

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th. Street, S.W.
Washington, D.C. 20554

Re: Reply Comments on application by SBC Communications, Inc., et al for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-16

Dear Ms. Dortch:

The Small Business Association of Michigan joins with the Competitive Local Exchange Carriers Association of Michigan and the Michigan Consumer Federation on the matter of reply comments opposing application by SBC for provision of in-region, interlata services in Michigan. We believe the SBC request is premature and that sustainable competition is not present in the SBC- Michigan service territory.

The Small Business Association of Michigan represents 7,000 small businesses located in all 83 counties statewide. Our members will benefit from the lower costs and improved services that can occur with a sustainable competitive local telephone market. While the Michigan local telephone market may have reached 20 percent competition, we believe that SBC's premature authorization to enter the long distance market will destroy Michigan's progress toward a sustainable market for local telephone competition.

For the reasons stated above as well as in our joint filing and comments submitted to the record, we strongly urge the FCC to reject SBC's 271 request. In addition, we urge you to require SBC to not re-file for a period of one year.

Sincerely,

Barry S. Cargill
Vice President, Government Relations

Michigan Consumer Federation

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Richard D. Gamber Jr., Executive Director

March 3, 2003

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445 12th Street, S.W.
Washington, D.C. 20554

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Thank you for your cooperation in this regard.

Very truly yours,

Richard D. Gamber, Jr.
Executive Director

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan	WC Docket No. 03-16

To: The Commission

REPLY COMMENTS OF COMPETITIVE LOCAL EXCHANGE CARRIER ASSOCIATION OF MICHIGAN, THE SMALL BUSINESS ASSOCIATION OF MICHIGAN, AND THE MICHIGAN CONSUMER FEDERATION OPPOSING APPLICATION BY SBC FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN MICHIGAN

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March 3, 2003

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REPLY COMMENTS OF COMPETITIVE LOCAL EXCHANGE CARRIER ASSOCIATION OF MICHIGAN, THE SMALL BUSINESS ASSOCIATION OF MICHIGAN, AND THE MICHIGAN CONSUMER FEDERATION OPPOSING APPLICATION BY SBC FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN MICHIGAN

The Competitive Local Exchange Carriers Association of Michigan ("CLECA"), the Small Business Association of Michigan ("SBAM"), and the Michigan Consumer Federation ("MCF") file these reply comments opposing SBC's January 16, 2003 application with the Commission for provision of in-region, interLATA services in Michigan.

The initial comments filed by parties in this proceeding fall into only a few categories. First, there are in-depth analyses provided by AT&T, WorldCom, the undersigned commenters, and several CLECs. Second, there are the comments of the Michigan Attorney General and the non-endorsement of the United States Department of Justice. Third, there are numerous one-page endorsements that appear to follow the SBC talking points about its application and appear to have been solicited from SBC's charitable and political contributions lists. In addition, since the filing of initial comments on February 6, 2003, SBC has again filed a follow-up report of two additional Ernst & Young corrective action reports.

The undersigned commenters generally agree with the comments of AT&T, WorldCom, and the CLECs and will not elaborate on those comments here. The undersigned will briefly comment on each of the remaining areas.

I. STILL MORE ERNST & YOUNG REPORTS DEMONSTRATE SBC STILL CAN NOT MAKE ITS OSS WORK

Since the first round of comments, SBC has again filed with the MPSC yet another report by its financial auditors, Ernst & Young.[1]

As indicated in the initial comments, the use of Ernst & Young in any manner in the proceeding constituted an end-run of the testing process to which SBC had previously agreed. Ernst & Young was brought in for only one reason: to end-run the BearingPoint report and speed its own attempt at Section 271 approval without the previously agreed to successful BearingPoint testing. As such, the MPSC erred in ever considering the Ernst & Young report.

The initial comments referenced the original Ernst & Young Report and the Supplemental Report issued in December 2002. These reports had found material noncompliance by SBC in several areas, with the supplemental report finding 17 areas of noncompliance.

The Corrective Action Reports do not indicate significant improvement. The January 14, 2003 Report still showed 18 instances of material noncompliance, including three new instances of material noncompliance. The February 28, 2003 Third Corrective Action Report came out too late (conveniently) for serious review prior to these comments, but the submittal only indicates 10 instances of material noncompliance have yet corrected, and admits that the testing still is not complete. Obviously, this means that with the comment period completed, the FCC will only have SBC's word for whether the testing is ever completed and as to whether material noncompliance is ever corrected. Moreover, the reports will not even be reported to the

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[1] *See, SBC's Submission of Supplemental Ernst & Young Reports and Update on Current Status of Corrective Action*, with attached Second and Third Corrective Action Reports, MPSC Case No. U-12320, filed by SBC on February 28, 2003.

Commission until May 2003, while the window for the Commission's decision closes in April 2003. Clearly, SBC is asking this Commission to act on incomplete information.

The Corrective Action Reports and the schedule submitted by SBC for corrections to only be shown by May 2003 again illustrate the rush that SBC exhibits in seeking approval before it passes the agreed-upon tests. The fact is that SBC did not get it right before, still did not get it right on the second attempt, still has not gotten it right in a third and fourth attempt, and now expects, with its record of failure, to have the Commission grant its application "on the come" based on promises that it will at last get it right in May, after the Commission grants its application.

The Commission should not reward such repeated failure, and certainly should not let this record of failure form the basis for accepting the empty promise that SBC will get it right later. Instead, the Commission should require SBC to re-file when (and if) it can finally get its act together, and, based on the frivolousness of this incomplete and noncompliant application, tell SBC not to re-apply for at least one year and not until all the tests are completed successfully.

II. THE COMMISSION SHOULD IGNORE THE OBVIOUSLY SOLICITED SHORT ENDORSEMENTS

The initial comments included numerous similar one page endorsements from legislators and civic organization leaders. These are of no benefit and should be ignored.

These endorsements share several characteristics. First, they contain no specifics. For example, they often contain a general statement that the time has come for another long distance competitor. Second, the endorsements recite in one form or another, the RBOC mantra, rejected years ago, that it is somehow unfair local service competitors to compete in the RBOC local service areas without SBC competing for long distance. There is no analysis of the number of

competitors offering service in either category, no analysis of whether adding SBC as a long distance competitor will help long distance consumers, and no indication that any of the endorsers are even aware of the precariousness of local service competition using UNE-P.

The strategy by SBC is obvious. Clearly, SBC has recruited persons from its charitable and political contributions lists for short endorsements of its application in order to pad an analysis for reply comments that a large number of commenters support the application. While CLECs and serious consumer and business advocates, like SBAM and MCF, have looked in depth at the issues behind the slogans, SBC has played the political game of lining up endorsements without analysis. The Commission should see through this politicized tactic and ignore these recruited endorsements.

III. THE MICHIGAN ATTORNEY GENERAL AND THE DEPARTMENT OF JUSTICE RAISE VALID CONCERNS THAT HAVE NOT BEEN ADDRESSED

The Michigan Attorney General takes the position that the issue to be addressed in this proceeding is not whether SBC should be authorized to enter the long distance market in Michigan, but under what conditions should that authority be granted. The commenters generally agree with the Attorney General that conditions should be involved, but believe the record demonstrates that such conditions have not been met.

The Michigan Attorney General's position is sound and demonstrates clear misgivings about SBC's application. For example, the Attorney General states:

> Specifically, the Michigan Attorney General notes that the current uncertainty over the continued availability of the unbundled network elements – platform (UNE-P) raises the spectre of a reduction of competition in the local exchange market in the foreseeable future. UNE-P service arrangements offer a solution to prohibitive co-location costs and allow competitive local exchange carriers (CLEC) to mirror the flexibility of a self-provided switch. With the UNE-P, CLECs in Michigan are able to lease both the subscriber loop and the switching functions from SBC, and have SBC physically interconnect these separate

> functions to form a working "dial tone" without requiring a CLEC co-location presence in SBC's central office. Many of the CLECs operating in Michigan, if not all, use UNE-P as the primary method by which they serve residential customers. Indeed, as Table 1 below shows, 66.76% of CLEC residential and small business customers in SBC's service territory in Michigan are served over UNE-P.[2]

The Michigan Attorney General follows up this statement with a table showing how dependent local competition in Michigan is on the UNE-P. He then concludes that "elimination of UNE-P at this juncture would irreparably harm the nascent competition that currently exists in Michigan."[3] Yet, SBC wants this UNE-P based competition to serve as the basis for finding the market in Michigan irreversibly open to competition, even as SBC and other ILECs seek to have UNE-P eliminated and oppose this Commission's finding that state commissions should be allowed to determine whether UNE-P is necessary for competition in a given market.[4] Finally, the Michigan Attorney General cautioned that careful consideration must be made to assure SBC does not backslide on its obligations.

The undersigned commenters agree with those concerns, and ask that the Commission require SBC to meet such obligations before granting relief, and not on empty promises.

Similar concerns were addressed in the February 26, 2003 evaluation by the United States Department of Justice ("DOJ"). The DOJ's evaluation was prefaced with the position that Section 271 approval "should be permitted only when the local markets in a state have been 'fully and irreversibly' opened to competition." The DOJ did not find that SBC had met this requirement in Michigan. While the DOJ stated that SBC has made significant strides in opening its Michigan markets, the DOJ expressed serious concerns that progress may not be irreversible, thereby precluding the DOJ from supporting the application. Specifically, the DOJ found that

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[2] Michigan Attorney General Comments, at pp 3-4.

[3] Michigan Attorney General Comments, at p 5.

[4] *See Bell Firms Pledge to Fight New FCC Rules*, Washington Post, February 25, 2003 (copy attached as Appendix 1)

the MPSC's reliance on the aggregate level of entry was insufficient, finding that all three entry tracks – facilities-based, UNEs, and resale – should be open. The DOJ also found concerns with SBC's change management process, with line loss notification, billing errors, working service conflict notification, line splitting, and the reliability of SBC's reported performance data.

The undersigned commenters agree with the DOJ's analysis, and submit that analysis as another reason the Section 271 relief should not be granted. Again, the concerns should be addressed before Section 271 is granted, not after. By SBC's own admission, no such completion of testing or completion of corrective actions, if they ever are completed, will not be reported until after this Commission's deadline. The Commission should find that unacceptable and deny the application as premature.

IV. CONCLUSION

For the above stated reasons, and for the reasons stated in their initial comments, the undersigned recommend that the Commission deny SBC's Application in its entirety. Instead, the Commission should require SBC to re-file when (and if) it can finally get its act together, and, based on the frivolousness of this incomplete and noncompliant application, tell SBC not to re-apply for at least one year and not until all the tests are completed successfully.

Respectfully submitted,

CLEC Association of Michigan

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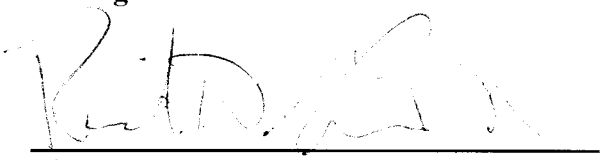

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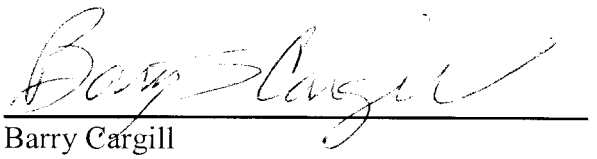

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Dated: March 3, 2003

APPENDIX 1

Bell Firms Pledge to Fight New FCC Rules (WP, 2/25/03)

Voice-Network Sharing To Be Fought in Court

By Jonathan Krim, Washington Post Staff Writer

Tuesday, February 25, 2003; Page E01

The major regional phone companies yesterday promised a court fight to overturn rules governing competition for local telephone service that were approved last week by the Federal Communications Commission.

Two of the four former Bell companies, SBC Communications Inc. and BellSouth Corp. also renewed promises made after the vote that they would not invest in new, high-speed Internet networks unless the local telephone rules are scuttled.

The companies' posture angered several government and industry executives, who accused the phone companies of the political equivalent of holding their breath to get more candy after getting what they originally asked for.

Although the FCC preserved the system that forces the Bells to lease their voice networks to rivals at discounted rates, the agency swept away similar requirements on "broadband," the high-speed lines considered key to the nation's telecommunications future.

At one time, the Bells sought that outcome.

"Old wires, old rules . . . new wires, new rules," was the way Tom Tauke, senior vice president of Verizon Communications Inc., described his company's position in a speech in August 2001.

The Bells spent tens of millions of dollars lobbying Congress and the FCC to drop the broadband rules, arguing that they could not be expected to invest in upgrading their networks with ultra-fast lines if they had to rent them to rivals at regulated rates.

The campaign attracted crucial support from major technology companies, which bet that if the Bells prevailed they would begin spending on new equipment, infrastructure and software that would revive the ailing technology economy.

With more legal battles certain to extend what already is one of the most expensive and punishing lobbying battles in memory, the Bells are unlikely to undertake such spending in the short run.

"Considering the Bells got almost precisely the broadband relief they requested, relief they argued would lead to increased investment, their change of heart makes you wonder whether they really want to increase spending at this time," said one Bush administration official who insisted on anonymity.

The Bells acknowledge that originally they were focused on gaining relief from broadband rules.

"There was a long time when we thought freedom in the broadband arena would be a panacea," said Herschel Abbott, vice president for government affairs at BellSouth.

But in the past year, he said, the Bells have been hurt as long-distance companies such as AT&T Corp. and WorldCom Inc. began offering competing local phone service, aggressively pricing local and long-distance packages that have forced the Bells to lower their rates.

That has been a boon to consumers, but the Bells claim that the regulated rates they charge their rivals to get onto their networks don't cover their costs. That, in turn, means the Bells cannot spend on new networks, Abbott said.

State regulators, who set the lease rates, disagree that the fees are below the Bells' costs. The system was put in place by Congress in 1996 and was designed to spur telephone competition.

The FCC allowed the states to retain authority but tweaked the system in response to a recent federal court ruling that found it to be unfair.

"I'd say the chances are around 100 percent" that the Bells will be back in court as soon as details of the FCC's rules are put in place in the next few months, said Steve Davis, senior vice president for public policy at Qwest Communications International Inc.

Davis said his company will not link broadband spending to the local phone service rules. "But it's not as if one can divorce the economics of the company," he said.

Yet some of the Bells improved their bottom lines recently. Verizon, for example, swung to a third-quarter profit of $4.4 billion, from the second quarter of last year, while SBC held steady at roughly $1.7 billion, compared with the prior quarter.

Verizon's Tauke said yesterday that the Bells are also concerned about the details of the broadband rules the FCC will ultimately write.

A summary put out by the FCC staff said that if the Bells run new fiber-optic lines to homes and want to pull copper lines out of service, they will still need state approval to do so. That might force the Bells to operate two networks, Tauke said.

An FCC spokesman said that the language will be refined and that the intent is not to make it hard for the Bells to upgrade their networks.

One technology lobbyist who helped lead the battle for broadband deregulation said that he is disappointed with the Bells' position but that he hopes they will see the benefits to investing in new networks.

"Now there's no excuse on the regulatory side" for the Bells not to invest, said Rhett Dawson, president of the Information Technology Industry Council, a lobbying group. "If they choose not to make the investment, that's a different matter."